

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

3M COMPANY,

Civil Action No. 10-cv-3849 MDJ/FLN

Plaintiff,

v.

AVERY DENNISON CORPORATION,

Defendant.

**AVERY DENNISON'S MOTION TO DISMISS PURSUANT TO FEDERAL
RULE OF CIVIL PROCEDURE 12(b)(1)**

Defendant Avery Dennison Corporation (“Avery”) hereby moves to dismiss the Complaint under Rule 12(b)(1) of the Federal Rules of Civil Procedure. In the Complaint, 3M seeks a declaratory judgment of invalidity, non-infringement, and alleged intervening rights related to United States Reissue Patent Nos. 40,700 (“the RE700 patent”) and 40,455 (“the RE455 patent”) (collectively, the “Heenan patents”). The Complaint must be dismissed for lack of subject matter jurisdiction because no case or controversy exists surrounding possible infringement of the Heenan patents by 3M.

This motion is based on Fed. R. Civ. P. 12(b)(1), the case law referenced in the accompanying brief, and the Declarations of Raj Saradesai, Michael C. Maier and Lora M. Friedemann.

DATED: September 27, 2010

s/ Kurt J. Niederluecke

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